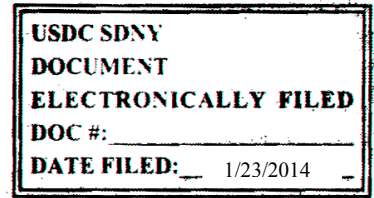


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



-----X
LUIS PAULINO RODRIGUEZ,

Plaintiff,

13-CV-3643 (PAC)(SN)

-against-

OPINION AND ORDER

**WARDEN, METROPOLITAN CORRECTIONAL
FACILITY and DR. BUSSANICH, Clinical Director
of Metropolitan Correctional Center,**

Defendants.

-----X
SARAH NETBURN, United States Magistrate Judge:

On January 22, 2014, a telephone conference was held. Although the *pro se* plaintiff was advised of the call, and was present with his counselor on the telephone, he was unable to meaningfully participate because he does not speak English. Accordingly, there was no discussion of the merits of the plaintiff's claims or the defendants' defenses. During this call, however, counsel for defendants stated that she would be filing a motion for judgment on the pleadings in accordance with Rule 12(c) of the Federal Rules of Civil Procedure. Defendants are directed to file the motion by February 24, 2014. Rodriguez should file an opposition with the Court by March 24, 2014, and defendant should file a reply by April 7, 2014. The Court is unable to provide the plaintiff with an interpreter or translation services, and he must file his opposition in English.

In a motion for "judgment on the pleadings," the defendants are asking the Judge to review the record and to rule in their favor based on the complaint and the answer. It is very important for the plaintiff to respond to the motion for judgment on the pleadings; otherwise, the

case may be decided without the plaintiff having an opportunity to present an argument to the Judge. An opposition form, which Rodriguez may use to respond to the motion, is attached to this Order as well as an information guide on responding to such motions prepared by our Court's *Pro Se* Office.

In addition, during the conference, through his counselor, Rodriguez made an oral application to the Court for *pro bono* counsel. Such a request is also set forth in his prayer for relief in his complaint. For the reasons set forth below, the motion is denied without prejudice.

A federal judge has "broad discretion" when deciding whether to appoint counsel to an indigent litigant. Hodge v. Police Officers, 802 F.2d 58, 60 (2d Cir. 1986); see Burgos v. Hopkins, 14 F.3d 787, 789 (2d Cir. 1994). "There is no requirement that an indigent litigant be appointed *pro bono* counsel in civil matters." Burgos, 14 F.3d at 789; 28 U.S.C. § 1915(e).

The factors to be considered in ruling on a motion for *pro bono* counsel are well settled and include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." Cooper v. A. Sargenti Co., 877 F.2d 170, 172 (2d Cir. 1989). Of these, "the factor which command[s] the most attention [is] the merits." Indeed:

[c]ourts do not perform a useful service if they appoint a volunteer lawyer to a case which a private lawyer would not take if it were brought to his or her attention. Nor do courts perform a socially justified function when they request the services of a volunteer lawyer for a meritless case that no lawyer would take were the plaintiff not indigent.

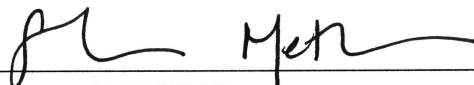
Id.

Here, Rodriguez filed this action, seemingly pursuant to 42 U.S.C. § 1983, alleging that defendants failed to provide necessary medical treatment for injuries sustained while at the

Metropolitan Correctional Center. The merits of Rodriguez's case are not so apparent as to warrant the appointment of counsel, especially in light of the defendants' anticipated motion.

Accordingly, the Court denies Rodriguez's application without prejudice to renew the application if the case proceeds after the motion is decided.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: New York, New York
January 23, 2014

cc: Luis Paulino Rodriguez
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